



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2169

Introduced 2/10/2011, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

220 ILCS 5/15-401

Amends the Public Utilities Act. In provisions concerning issuance of a certificate of good standing authorizing a person to operate as a common carrier by pipeline, makes changes concerning the factors the Illinois Commerce Commission shall consider in its determination of public convenience and necessity for a proposed pipeline or facility; provides that an application may request either that the Commission review and approve a specific route for a pipeline, or that the Commission review and approve a project route width that identifies the areas in which the pipeline would be located; provides for a consolidated proceeding for decisions on consolidated applications; requires the Commission to make its determination on any application filed pursuant to this Section and issue its final order within one year after the date that the application is filed unless an extension is granted; provides that the rules of the Commission may include additional options for expediting the issuance of permits and certificates. Makes other changes. Effective July 1, 2011.

LRB097 07925 ASK 48040 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 15-401 as follows:

6 (220 ILCS 5/15-401)

7 Sec. 15-401. Licensing.

8 (a) No person shall operate as a common carrier by pipeline
9 unless the person possesses a certificate in good standing
10 authorizing it to operate as a common carrier by pipeline. No
11 person shall begin or continue construction of a pipeline or
12 other facility, other than the repair or replacement of an
13 existing pipeline or facility, for use in operations as a
14 common carrier by pipeline unless the person possesses a
15 certificate in good standing.

16 (b) Requirements for issuance. The Commission, after a
17 hearing, shall grant an application for a certificate
18 authorizing operations as a common carrier by pipeline, in
19 whole or in part, to the extent that it finds that the
20 application was properly filed; a public need for the service
21 exists; the applicant is fit, willing, and able to provide the
22 service in compliance with this Act, Commission regulations,
23 and orders; and the public convenience and necessity requires

1 issuance of the certificate. Evidence encompassing any of the
2 factors set forth in this subsection (b) that is submitted by
3 the applicant, any other party, or the Commission's staff shall
4 also be considered by the Commission in determining whether a
5 public need for the service exists under either current or
6 expected conditions. The changes in this subsection (b) are
7 intended to be confirmatory of existing law.

8 In its determination of public convenience and necessity
9 for a proposed pipeline or facility designed or intended to
10 transport crude oil and any alternate locations for such
11 proposed pipeline or facility, the Commission shall consider,
12 but not be limited to, the following:

13 (1) any evidence presented by the Illinois
14 Environmental Protection Agency regarding the
15 environmental impact of the proposed pipeline or other
16 facility;

17 (2) any evidence presented by the Illinois Department
18 of Transportation regarding the impact of the proposed
19 pipeline or facility on traffic safety, road construction,
20 or other transportation issues;

21 (3) any evidence presented by the Department of Natural
22 Resources regarding the impact of the proposed pipeline or
23 facility on any conservation areas, forest preserves,
24 wildlife preserves, wetlands, or any other natural
25 resource;

26 (4) any evidence of the effect of the pipeline upon the

1 economy, infrastructure, and public safety presented by
2 local governmental units that will be affected by the
3 proposed pipeline or facility;

4 (5) any evidence of the effect of the pipeline upon
5 property values presented by property owners who will be
6 affected by the proposed pipeline or facility, provided
7 that the Commission need not hear evidence as to the actual
8 valuation of property such as that as would be presented to
9 and determined by the courts under the Eminent Domain Act;

10 (6) any evidence presented by the Department of
11 Commerce and Economic Opportunity regarding the current
12 and future local, State-wide, or regional economic effect,
13 direct or indirect, of the proposed pipeline or facility
14 including, but not limited to, property values, employment
15 rates, and residential and business development; ~~and~~

16 (7) any evidence addressing the factors in this
17 subsection (b) or other relevant factors that is presented
18 by any other State agency, the applicant, a party, or other
19 entity that participates in the proceeding, including
20 evidence presented by the Commission's staff;

21 (8) any evidence presented by a State agency or unit of
22 State or local government as to the current and future
23 national, State-wide, or regional economic effects of the
24 proposed pipeline, direct or indirect, as they affect
25 residents or businesses in Illinois, including, but not
26 limited to, such impacts as the ability of manufacturers in

1 Illinois to meet public demand for related services and
2 products and to compete in the national and regional
3 economies, improved access of suppliers to regional and
4 national shipping grids, the ability of the State to access
5 funds made available for energy infrastructure by the
6 federal government, mitigation of foreseeable spikes in
7 price affecting Illinois residents or businesses due to
8 sudden changes in supply or transportation capacity, and
9 the likelihood that the proposed construction will
10 substantially encourage related investment in the State's
11 energy infrastructure and the creation of energy related
12 jobs; and

13 (9) any evidence presented by any State or federal
14 governmental entity as to how the proposed pipeline or
15 facility will affect the security, stability, and
16 reliability of energy in the State or in the region.

17 In its written order, the Commission shall address all of
18 the evidence presented, and if the order is contrary to any of
19 the evidence, the Commission shall state the reasons for its
20 determination with regard to that evidence. ~~The provisions of~~
21 ~~this amendatory Act of 1996 apply to any certificate granted or~~
22 ~~denied after the effective date of this amendatory Act of 1996.~~

23 (b-5) An application filed pursuant to this Section may
24 request either that the Commission review and approve a
25 specific route for a pipeline, or that the Commission review
26 and approve a project route width that identifies the areas in

1 which the pipeline would be located, with such width ranging
2 from the minimum width required for a pipeline right-of-way up
3 to 500 feet in width. The purpose for allowing the option of
4 review and approval of a project route width is to provide
5 increased flexibility during the construction process to
6 accommodate specific landowner requests, avoid environmentally
7 sensitive areas, or address special environmental permitting
8 requirements.

9 (b-10) A common carrier by pipeline that may request any
10 other approvals as may be needed from the Commission for
11 completion of the pipeline under Article VIII or any other
12 Article or Section of this Act at the same time, and as part of
13 the same application, as its request for a certificate of good
14 standing under this Section. The Commission's rules shall
15 ensure that notice of such a consolidated application is
16 provided within 30 days after filing to the landowners along a
17 proposed project route, or to the potentially affected
18 landowners within a proposed project route width, using the
19 notification procedures set forth in the Commission's rules. If
20 a consolidated application is submitted, the requests shall be
21 heard on a consolidated basis and a decision on all issues
22 shall be entered within the time frames stated in subsection
23 (b-15) of this Section. In such a consolidated proceeding, the
24 Commission may consider evidence relating to the same factors
25 identified in subsection (b) of this Section in granting a
26 certificate of need under Section 8-503 of this Act. If the

1 Commission grants approval of a project route width as opposed
2 to a specific project route, the common carrier by pipeline
3 must, as it finalizes the actual pipeline alignment within the
4 project route width, file its final list of affected landowners
5 with the Commission at least 14 days in advance of beginning
6 construction on any tract within the project route width and
7 also provide the Commission with at least 14 days notice before
8 filing a complaint for eminent domain in the circuit court with
9 regard to any tract within the project route width.

10 (b-15) The Commission shall make its determination on any
11 application filed pursuant to this Section and issue its final
12 order within one year after the date that the application is
13 filed unless an extension is granted as provided in this
14 subsection (b-15). The Commission may extend the one-year time
15 period for issuing a final order on an application filed
16 pursuant to this Section up to an additional 6 months if it
17 finds, following the filing of initial testimony by the parties
18 to the proceeding, that due to the number of affected
19 landowners and other parties in the proceeding and the
20 complexity of the contested issues before it, additional time
21 is needed to ensure a complete review of the evidence. If an
22 extension is granted, the schedule for the proceeding shall not
23 be further extended beyond this 6-month period, and the
24 Commission shall issue its final order within the 6-month
25 extension period. The Commission shall also have the power to
26 establish an expedited schedule for making its determination on

1 an application filed pursuant to this Section in less than one
2 year if it finds that the public interest requires the setting
3 of such an expedited schedule.

4 (b-15) Within 6 months after the Commission's entry of an
5 order approving either a specific route or a project route
6 width under this Section, the common carrier by pipeline that
7 receives such order may file supplemental applications for
8 minor route deviations outside the approved project route
9 width, allowing for additions or changes to the approved route
10 to address environmental concerns encountered during
11 construction or to accommodate landowner requests. Notice of a
12 supplemental application shall be provided to any State agency
13 that appeared in the original proceeding or immediately
14 affected landowner at the time such supplemental application is
15 filed. The route deviations shall be approved by the Commission
16 within 45 days, unless a written objection is filed to the
17 supplemental application within 20 days after the date such
18 supplemental application is filed. Hearings on any such
19 supplemental application shall be limited to the
20 reasonableness of the specific variance proposed, and the
21 issues of public need or public convenience or necessity for
22 the project or fitness of the applicant shall not be reopened
23 in the supplemental proceeding.

24 (b-20) The rules of the Commission may include additional
25 options for expediting the issuance of permits and certificates
26 under this Section. Such rules may provide that, in the event

1 that an applicant elects to use an option provided for in such
2 rules; (1) the applicant must request the use of the expedited
3 process at the time of filing its application for a license or
4 permit with the Commission; (2) the Commission may engage
5 experts and procure additional administrative resources that
6 are reasonably necessary for implementing the expedited
7 process; and (3) the applicant must bear any additional costs
8 incurred by the Commission as a result of the applicant's use
9 of such expedited process.

10 (c) Duties and obligations of common carriers by pipeline.
11 Each common carrier by pipeline shall provide adequate service
12 to the public at reasonable rates and without discrimination.

13 (Source: P.A. 94-793, eff. 5-19-06.)

14 Section 99. Effective date. This Act takes effect July 1,
15 2011.